

Internal Qs & As
Announcement of settlement with Alpha Natural Resources
Version 3/4/14

Questions on Complaint, Settlement Details

1. What happened today?

EPA and DOJ announced a settlement with Alpha Natural Resources, Inc. (Alpha) and 67 of its subsidiaries to resolve longstanding violations of CWA discharge permits at Alpha coal mining operations throughout Appalachia. The company will implement extensive compliance measures at an estimated cost of nearly \$200 million (\$172 million in capital costs, with an additional estimated \$27 million in annual operating and maintenance costs). These compliance measures will apply to all Alpha coal mining facilities and associated operations in the Appalachian region. The company will also pay a civil penalty of \$27.5 million dollars – the largest ever for violations of CWA discharge (NPDES) permits -- which will be split between the United States and the co-plaintiff states of Kentucky, Pennsylvania, and West Virginia.

** Note that there are 68 defendants to the consent decree, but we only have claims in the complaint against 60 companies: Alpha, Alpha Appalachian Holdings (formerly Massey), and 58 operating subsidiaries. This is because 8 operating subsidiaries are subject to CD requirements, but did not have any CWA violations.*

2. Who is Alpha?

Alpha Natural Resources, Inc. is the top metallurgical coal supplier in the United States, with more than 79 active mines and 25 coal preparation plants throughout Appalachia and the Powder River Basin in Wyoming. Alpha is headquartered in Bristol, Virginia. Alpha's corporate umbrella includes the company formerly known as Massey Energy, which it acquired in June of 2011.

3. You say this is the largest civil penalty under the Clean Water Act in history. Does that mean this is the largest case in Clean Water Act history?

This is certainly the largest case for violations of discharge limits in terms of civil penalty and number of violations.

4. Please describe the violations and how they occurred.

EPA has identified a total of 6,289 violations of permit conditions in CWA NPDES permits held by Alpha's subsidiaries. These permits were issued by the states of West Virginia, Kentucky, Tennessee, Virginia, and Pennsylvania. Alpha violated discharge limits contained in 336 of the company's NPDES permits, including limits for iron, total suspended solids, aluminum, pH, manganese, selenium, and osmotic pressure.* This

means that discharges from Alpha's treatment ponds were released into local rivers, streams, and creeks at levels above permit limits.

EPA also identified unpermitted discharges of mine wastewater from Alpha operations at the Cumberland Mine near Waynesburg, Pennsylvania.

** Osmotic pressure is a parameter included in some Pennsylvania permits to estimate the effect of dissolved constituents in the water (primarily salts) on aquatic life.*

5. How and when did we find out about the violations?

In 2008, Massey entered into a settlement with the United States in which it agreed to pay a civil penalty of \$20 million for similar CWA violations and to implement measures to identify violations, resolve problems, and prevent future violations. However, since 2008, Massey continued to violate the CWA, with only slight improvements in compliance. In June 2011, Alpha purchased Massey. Prior to that time, EPA had been in discussions with Massey regarding their ongoing CWA compliance problems (and failure to meet the terms of the 2008 CD), based on violations identified in reports submitted under the CD, information provided by the states, and information gathered from site inspections. EPA also issued an information request to Alpha. In response to the information request, Alpha submitted detailed monitoring and other data collected as part of the company's NPDES permit requirements. Alpha has fully cooperated in EPA's investigation. EPA also worked closely with the states (West Virginia, Pennsylvania, and Kentucky) in developing claims against Alpha and negotiating the settlement.

6. You say there were thousands of violations. Are these the most violations you've ever uncovered? What's the next largest?

These are the most violations in any enforcement action against a coal producer for CWA violations, and as far as we are aware, the most violations in any single case for violations of discharge limits. The next largest enforcement action against a coal producer was the case against Massey Energy.

7. Where did the violations take place?

The violations occurred at mining operations run by 58 subsidiaries* located in Kentucky, Pennsylvania, Tennessee, Virginia, and West Virginia.

** Note that there are 68 defendants to the consent decree, but we only have claims in the complaint against 60 companies: Alpha, Alpha Appalachian Holdings (formerly Massey), and 58 operating subsidiaries. This is because 8 operating subsidiaries are subject to CD requirements, but did not have any CWA violations.*

8. What role did the states play in investigating and negotiating this CD?

The states each played an indispensable role, assisting in information gathering, identifying violations, and forming strong negotiation positions. This settlement shows the benefits of strong federal and state cooperation in environmental enforcement.

9. Why aren't the states here on the phone to talk about this

Given the number of states and federal entities involved, it was decided that the states and federal government would coordinate on press, but conduct any events separately.

10. Why didn't Tennessee and Virginia join the settlement?

Both Tennessee and Virginia were given the opportunity to participate, but decided not to. The number of violations occurring at mining operations in those two states, was far fewer than in the co-plaintiff states. This may be why they decided not to participate as co-plaintiffs. Importantly, however, the injunctive relief applies to all Appalachian Alpha operations, even if the state is not a co-plaintiff.

11. Who signed for the states? What level of sign off in states?

The settlement was signed by high level officials from each state.

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| For Kentucky: | Leonard Peters, Secretary, Energy and Environmental Cabinet, and Michael Haines, General Counsel, Energy and Environmental Cabinet |
| For Pennsylvania: | John Stefanko, Deputy Secretary, Office of Active and Abandoned Mining Operations, and Martin H. Sokolow, Jr., Regional Counsel, Office of Chief Counsel, PA Department of Environmental Protection |
| For West Virginia: | Charles S. Driver, Office of Legal Services, West Virginia Department of Environmental Protection, and Harold Ward, Acting Director, Division of Mining and Reclamation, West Virginia Department of Environmental Protection |

12. How many violations are associated with former Massey mining operations? How many are associated with Alpha mining operations?

There are 3,315 violations associated with former Massey mining operations, and 2,974 associated with Alpha mining operations.

13. Why is it fair to stick Alpha with a penalty for thousands of violations by Massey?

Alpha purchased Massey in its entirety in 2011, and became a successor to Massey's

liability at that time. Massey's environmental record was no secret at the time of the purchase.

14. What is the company required to do, aside from paying the penalty?

Alpha must make extensive operational improvements and upgrades, corporate-wide, to its mining operations throughout Appalachia. Alpha must: develop and implement an environmental management system; conduct periodic internal and third-party audits of its mining operations; develop centralized audit and violations databases to track information relevant to compliance efforts at all of Alpha's numerous operations in Appalachia (regulated under more than 700 NPDES permits); and significantly improve timely responses to violations. Alpha must also pay automatic stipulated penalties, which are increased and, in some cases, doubled for continuing violations. These requirements apply to all of Alpha's current and future operations in Appalachia.

In addition to operational improvements and upgrades, Alpha must also build and operate an advanced wastewater treatment system to address violations of osmotic pressure permit limits at the Cumberland and Emerald Mines in Pennsylvania, and must implement a variety of compliance approaches to address violations of selenium permit limits, including the construction and operation of three biochemical reactors and a moving bed bioreactor.

15. Do these requirements apply to Alpha's Wyoming operations?

No. The requirements apply to all of Alpha's current and future operations in Appalachia (Kentucky, Pennsylvania, Tennessee, Virginia, and West Virginia).

16. Do we know anything about Alpha's compliance status in the Powder River Basin in Wyoming?

The Wyoming Department of Environmental Quality (WYDEQ) is the primary permitting and enforcement authority in Wyoming. WYDEQ has not raised any specific NPDES compliance issues regarding Alpha to EPA.

17. Will public have access to data generated under this CD?

EPA will post non-confidential portions of quarterly reports to its website. The public will also be able to access any NPDES compliance information that is electronically reported by the state to EPA's Integrated Compliance Information System.

18. What is an environmental management system and how does it help ensure compliance?

The environmental management system is an organizational system designed to manage compliance in a systematic, planned, and documented manner to help foster a top-down, prevention-focused approach to environmental compliance.

19. Why doesn't the CD require Alpha to implement treatment systems at all outfalls?

Site investigations at Alpha operations indicated that in most instances (with the notable exceptions of selenium and osmotic pressure), violations were caused by failure to adequately operate and maintain existing treatment systems rather than the lack of a system altogether. The approach taken in the CD includes multiple, overlapping requirements to identify possible problems before violations occur, and has the benefit of allowing flexibility in treatment approaches over time. Moreover, to the extent that treatment systems need to be substantially upgraded or replaced, this will be identified by outside experts hired to conduct treatment system audits and respond to ongoing violations, whose recommendations must be implemented by Alpha under the CD.

20. Why doesn't the CD include the requirement that Alpha complies with CWA?

Alpha is required to comply with the Clean Water Act regardless of whether such a provision is included in the CD. Given the practical recognition that some time will be necessary to come into compliance, the CD takes the approach of assessing automatic stipulated penalties for effluent limit violations to provide the incentive to achieve compliance as quickly as possible.

21. The settlement includes some "water management" approaches to dealing with selenium. Isn't this simply moving the problem somewhere else?

This approach removes discharges from sensitive upper headwater streams. The relocated discharges are only allowed if the permitting process determines that the discharges satisfy certain criteria, which addresses pollutant loading and environmental impacts.

22. Why is the compliance deadline for osmotic pressure violations not until 2016?

The settlement requires Alpha to construct and operate an advanced wastewater treatment system to address its osmotic pressure violations at two significant longwall mining operations in Pennsylvania. The deadline in the settlement is an appropriate timeframe for the company to design and construct an advanced wastewater treatment system of the scale required.

23. Isn't that treatment system already required by the Cumberland permit?

We worked in tandem with Pennsylvania to ensure that CD requirements were consistent with applicable permit requirements. Including requirements for construction of the

treatment system in the CD has the added benefit of rendering these requirements part of an enforceable court order, with specified stipulated penalties in the CD if deadlines are met and the system fails to achieve compliance with applicable limits.

24. How does this settlement compare to the other federal coal settlements that are out there (Massey, Arch, Patriot)?

The settlement includes many requirements beyond what was included in the Massey CD, including more substantial internal and external oversight requirements (see response to question 29).

The settlement terms are similar to those in Arch and Patriot, under which those two companies have achieved dramatic improvements in CWA compliance. Beyond the requirements from the Arch and Patriot decrees, this settlement includes greater involvement in compliance efforts by outside experts at an earlier point in time. This settlement also includes more stringent reporting and documentation requirements, including periodic third party audits of centralized violations and audit databases for accuracy and completeness, as well as more substantial stipulated penalty amounts.

25. Are checks built into the agreement to make sure that Alpha complies with auditing done by third parties? Who selects the independent auditor?

Yes. Alpha will provide reports to EPA on the audits conducted by third parties, and there are stringent penalties for failure to comply with the settlement. EPA will approve the independent auditors required under the settlement.

26. Why weren't criminal charges brought?

The complaint and consent decree focus on civil claims for violations of the Clean Water Act. The settlement expressly reserves claims for any violations that are not included in the Complaint. We cannot otherwise comment on whether there are any ongoing enforcement matters.

27. Will the settlement do anything to stop the environmental degradation being caused by mountain mining and valley fills in Appalachia? If not, what are EPA and DOJ planning to do about this problem?

Many of the operations subject to this settlement are mountaintop mining, and the settlement is designed to stop illegal discharges of pollutants and bring those operations into compliance with the Clean Water Act. EPA, DOJ, and our state partners continue to investigate all mining operations to determine whether there are additional operators out of compliance with NPDES permit limits, and will take action accordingly.

Questions Relating to Civil Penalty Amount

28. How does this civil penalty compare to others against other coal companies for these kinds of violations?

This is the largest civil penalty by \$7.5 million. The next largest civil penalties against coal companies for CWA violations are: Massey (\$20 million); Patriot (\$6 million); Consol Energy (\$5.5 million); and Arch (\$4 million).

29. How did you decide how much of the penalty to give the states? What will the states do with the money?

The civil penalty was split 50/50 between the United States and the states. The states' share of their half of the civil penalty was determined based on the percentage of total violations that occurred in their state.

Approximately 50% of West Virginia's penalty will go to the Mining and Reclamation Operating Fund, approximately 44% to the Water Quality Management Fund, and approximately 6% to the Operator Permit/Fees Fund. Pennsylvania's portion of the civil penalty will be sent to the Clean Water Fund. Kentucky's civil penalty portion will be placed into the state treasury, in accordance with Kentucky law.

30. What is the U.S. going to do with all this penalty money?

As required by the Miscellaneous Receipts Act, the penalty will go to the U.S. Treasury. A small portion of civil penalties recovered are available for development of future environmental enforcement cases.

31. What is the maximum penalty the company could have paid for these thousands of violations? The civil penalty is a fraction of the statutory maximum – isn't it too low considering the scope of the violations?

The Clean Water Act sets the maximum penalty that can be paid per day of violation. In the case of violations after January 12, 2009, that penalty is \$37,500 per day.

Statutory maximum penalties are rarely awarded, and a number of statutory factors are considered when assessing a civil penalty amount.* In evaluating those factors, a penalty of \$27.5 million – the largest ever for wastewater discharge violations – is appropriate in this case.

** Statutory factors include: the seriousness of the violation, the economic benefit resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and other such matters as justice may require. CWA Section 309(d).*

Questions Relating to 2008 Massey CD

32. Why does EPA think that the Alpha CD will do a better job at ensuring compliance than the 2008 Massey CD did?

Under this CD, Alpha must implement comprehensive, system-wide improvements to ensure future compliance that go beyond what had been required for Massey (see Response 13 for details), including implementation and auditing of a company-wide environmental management system developed by outside experts. In addition, the Alpha CD requires strong checks and balances to ensure that potential problems are identified immediately and corrected as necessary. These checks and balances include third party audit and review of treatment systems and a comprehensive violation and audit results tracking system.

Also, in the event of future violations, required compliance measures are more stringent, including daily monitoring and treatment and hiring outside experts early on to examine ongoing violations. Alpha is also required to pay stipulated penalties, which are increased and, in some cases, doubled for continuing violations.

33. Wasn't Massey required to implement an environmental management system under the 2008 CD, yet it still continued to violate the Clean Water Act?

The 2008 CD required the company to develop an "environmental assurance manual." This settlement requires Alpha to hire an outside expert to develop and assist in implementation of a complete environmental management system with a specified list of elements, and a second outside expert to audit that system to ensure that it is being implemented correctly.

34. Did the Independent Monitoring Contract (IMC) required by the 2008 Massey CD find any non-compliance with the CD?

Massey was required to hire an IMC (approved by EPA) to review its compliance with the CD. The IMC found that Massey had failed to consistently report permit exceedances to EPA as required by the CD. EPA confirmed this information, and initiated investigation into Massey's non-compliance.

35. Why isn't there an IMC in the Alpha settlement?

The Alpha settlement includes extensive review by third parties, including third party review of audits, the company's EMS, treatment systems, the violations tracking database, as well as Alpha's compliance with the CD itself. Given this level of third party involvement, EPA does not believe an IMC is necessary.

36. In the 2008 Massey CD, Massey was required to pay stipulated penalties for future NPDES permit exceedances. How much in stipulated penalties

did they pay?

Massey (and Alpha after its 2011 purchase of the company) paid approximately \$1.1 million dollars in stipulated penalties.

37. Does the civil penalty include any reduction for stipulated penalties paid under the 2008 Massey CD?

Yes. As required under the 2008 Massey CD, the United States took into account stipulated penalties paid in determining the appropriate civil penalty amount for those violations.

38. What happens now to the 2008 Massey CD?

The 2008 Massey CD will be terminated upon entry of the Alpha CD.

39. Since Massey was already under a consent decree, which is a court order, why didn't you haul Massey in front of the judge and have him put the responsible employees in jail for repeatedly violating his order?

EPA investigations identified violations of reporting and stream restoration requirements in the 2008 CD, but did not uncover anything that arose to the criminal level. It was determined that the best way to bring Massey into compliance was to subject the company to a second, much more stringent consent decree with a higher level of stipulated penalties for noncompliance with the CD and the Clean Water Act.

40. Will this settlement be presented to the same judge as the Massey CD?

That is up to the Southern District of West Virginia. We have filed in the same Division as the 2008 Massey CD, and identified the Massey case as a related case to our complaint.

41. Are the same Massey people who violated the earlier consent decree still working at Alpha?

As publically reported, the CEO of Massey, Don Blankenship, left the company in December of 2010. Any other questions about employee turnover will have to be directed to Alpha.

In general, our investigations focused on what measures were necessary to prevent violations from recurring regardless of the particular individuals working at an operation. These include training requirements, measures to standardize and increase internal and external accountability, and far-reaching internal and external oversight of compliance and preventative measures.

42. What's happened to Massey, anyway?

Massey Energy was acquired in its entirety by Alpha in June of 2011. Massey still exists as a corporate entity, but has changed its name to Alpha Appalachian Holdings. Questions about Alpha Appalachian Holdings' role in the Alpha corporate structure will have to be directed to Alpha.

Questions on Public Health, Local Communities Impact

43. Describe the potential/actual harm to environment and/or human health.

Surface mining and its impacts, and ensuring that mining companies are in compliance with environmental laws is a priority for EPA and its state partners. Alpha mines discharge to numerous receiving streams and watersheds in Appalachia. By addressing violations, EPA estimates that compliance with the Consent Decree will result in an estimated annual reduction of more than 45 million pounds of pollutants.

Excess levels of metals commonly found in mining discharges, such as iron and aluminum, can be toxic to fish by disrupting metabolic and reproductive systems. Precipitation of these metals can destroy habitat needed by macro invertebrates.

High levels of sediment can result in increased turbidity and decreased oxygen in receiving waters, which in turn can result in loss of in-stream habitat for fish and other aquatic species. Sediment can kill fish directly, destroy spawning beds, suffocate fish eggs and bottom dwelling organisms, and block sunlight resulting in reduced growth of beneficial aquatic grasses.

Selenium can bioaccumulate through aquatic food webs and high levels of selenium can cause toxic effects in fish and birds. Selenium has been associated with increased death and deformities in fish and reduced hatching in birds¹. Selenium can be toxic to humans, but at significantly higher levels than to aquatic life.

Osmotic pressure is based on the level of dissolved salts and other constituents in the water. Increased levels of salts, as measured by osmotic pressure, disrupt the life cycle of freshwater aquatic organisms. Freshwater animals can be exposed directly through their gills or other breathing surfaces. Some freshwater plants and animals can adjust to saltier waters, but many are unable to cope with extreme ranges of salinity. Water with high salt concentrations downstream of mountaintop mines and valley fills is toxic to some stream organisms, disrupting ionic and osmoregulatory functions.

44. Any impacts to disadvantaged / EJ communities?

The many communities located near Alpha's mining operations are rural, low income and poorly educated. Many people rely on hunting and fishing as a food source, and rely on wells for their drinking water. The injunctive relief called for in the settlement will

¹ <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=215267#Download>

substantially reduce the number of pollutants getting into the watersheds where these communities live.

45. Was there any impact on drinking water, on any community, or the environment in any way from these discharges? Any evidence of fish kills or illnesses caused by the discharges?

We do not have any direct evidence of fish kills or illnesses. However, in many instances, pollutants were discharged significantly in excess of water quality-based limits, which are set at levels designed to protect human health and the environment. See response to question 40 for further discussion of possible harm caused by these pollutants.

46. What impact will the settlement have on drinking water in Appalachia?

While the settlement addresses CWA NPDES discharge limit violations, benefits to downstream water systems should result. NPDES permits include limits intended to, among other things, protect aquatic life and human health, including drinking water. A reduction in the amount of pollutant loads consistent with allowable NPDES limits should allow downstream drinking water treatment systems to work more effectively and efficiently.

47. In an AP article from January 18, 2014, a water quality study is cited, “Public drinking water violations in mountaintop coal mining areas of WV”. This study states that violations are 7 times greater in mining areas than non-mining areas. Is this correct?

The study compared reported violations in the state of West Virginia. In the discussion of the report, it is stated that “Most of the violations around the state were the reporting monitoring type (97%), health based violations were rare (3%). To the extent that health based violations were reported, they were less common in MTM counties compared to other counties and usually related to water chlorination.” Reporting and monitoring violations are more frequent at smaller facilities, which tend to characterize mining communities, and so we would expect a higher rate of non-compliance. The failure to report and monitor is a significant violation because it can frustrate the detection of health based violations. That being said the high rate of non-reporting and monitoring may be more related to a community’s drinking water system size than whether it is near a mining facility.

48. Why does the settlement not include any projects, or Supplemental Environmental Projects (SEPs) to benefit the community?

SEPs are not required by law, and EPA cannot mandate that a defendant conduct a particular SEP. In a given year, less than 10% of federal settlements include SEPs. Federal SEPs must comply with EPA's 1998 SEP Policy which ensures compliance with federal laws, including the Miscellaneous Receipts Act, and must have a substantial connection to the enforcement actions' underlying violations.

Although there are no federal SEPs in the settlement, the penalty portion allocated to West Virginia and Pennsylvania do go directly to state mining and water programs.

49. Why doesn't the Consent Decree require the company to spend money to mitigate the adverse effects of its illegal discharges, such as by restoring damaged streams, rivers and other habitat?

The consent decree focuses on substantial measures to bring the company into compliance, with the aim to help restore streams by eliminating future illegal discharges across all of Alpha's Appalachian operations.

50. Are you saying there is no mess? Are you saying the streams will recover by themselves?

Preventing discharge of excess pollutants will go a long way toward speeding stream recovery. However, we can't say at this point whether there are other sources of contamination to the hundreds of streams at issue that will continue to cause problems. Whether additional cleanup measures are necessary and appropriate under applicable environmental laws is a question for another day.

51. Do you have the authority under the Clean Water Act to make a coal company like Alpha clean up the contamination it caused in the streams?

There is no direct provision under the Clean Water Act that requires clean-up of excess pollutant discharges. That said, under appropriate circumstances, a court has the authority in a Clean Water Act case to order measures necessary to mitigate environmental harm. There are also provisions under other federal and state regulations that provide for environmental cleanup under certain circumstances.

52. How will the money from the penalty be used by EPA and the states to help the communities that were impacted by these violations?

Approximately 50% of West Virginia's penalty will go to the Mining and Reclamation Operating Fund, approximately 44% to the Water Quality Management Fund, and approximately 6% to the Operator Permit/Fees Fund. Pennsylvania's portion of the civil penalty will be sent to the Clean Water Fund. Kentucky's civil penalty portion will be placed into the state treasury, in accordance with Kentucky law.

53. The 2008 Massey CD included requirements for stream restoration,

toxicity testing, and a conservation easement. Why aren't similar requirements included here?

Toxicity testing is now routinely included in state permits. The stream restoration and conversation easement requirements under the 2008 CD proved difficult to implement and oversee, with uncertain environmental benefits. After consulting with the states, the United States decided to focus negotiation efforts on achieving strong measures to bring Alpha into compliance with the CWA.

54. How will this settlement impact jobs and the economy?

EPA is concerned about pollution to our air and water, and does not make economic decisions for private businesses. The settlement was negotiated between the parties, and only Alpha knows how it will affect their business operations.

Questions on Related Citizen Suits

55. Was the settlement prompted by citizen suits in Pennsylvania and West Virginia against Alpha companies?

Federal investigations and negotiations with Alpha began prior to the notices of intent and complaints filed for the citizen suits in Pennsylvania and West Virginia.

56. Were these citizen groups involved in the settlement negotiations?

No. They were each notified prior to filing complaints that their claims were part of an ongoing enforcement proceeding. The citizen groups will have an opportunity for review and comment during the 30-day notice and comment period after it is lodged with the Court.

57. How will these citizen groups react to today's settlement with Alpha?

We are hopeful that the citizen groups will be supportive of this settlement, which includes significant injunctive relief designed to bring the company quickly into compliance and an historic penalty amount.

Questions on Coal-Related Issues

58. Is it fair to call this settlement just another part of the Obama Administration's War on Coal?

There is no "war on coal." As under all administrations, EPA and DOJ have taken the actions necessary to carry out their regulatory mandate to implement and enforce environmental laws. In this particular case, we have a company that has self-reported thousands of violations of the Clean Water Act that have polluted rivers and streams in Appalachia. It is appropriate, and indeed necessary, that action is taken to prevent these

violations from continuing.

59. How much of the coal industry are under federal court orders? Are there other big operators out there who are doing the same things that Massey and Alpha did who are NOT under court order?

With this CD, a substantial percentage of the coal industry in Appalachia is now under federal court orders, including top producers Alpha, Arch, Consol, and Patriot. We cannot at this point in time provide exact numbers. EPA and DOJ will continue to work with the states to investigate the industry to determine whether there are additional operators out there, large or small, who violate NPDES permit limits on an ongoing basis.

60. The Washington Post reported that Alpha uses the coal-cleaning chemical that recently spilled into West Virginia streams, and purchased it from the company that caused the recent spill into the Elk River. Was this chemical part of the illegal discharges that are the subject of this settlement?

No. This settlement resolves civil claims identified in our Complaint, which primarily focuses on violations of pollutant limits in NPDES permits issued to Alpha subsidiaries. The coal-cleaning chemical produced by Freedom Industries that was spilled into the Elk River recently is not included in any of the NPDES permits that are the subject of this settlement.

61. Does this settlement include anything to prevent illegal discharges of chemicals used to wash coal? What does EPA intend to do to prevent future catastrophes like the Freedom spill?

This settlement resolves specific violations of NPDES permit limits, and does not address pollutants not identified and addressed with specific discharge limits in NPDES permits.

Alpha remains subject to all applicable environmental regulations, and the settlement expressly reserves claims for violations that are not included in the Complaint, which would include any claims for illegal discharges of coal-washing chemicals.

We are here today to discuss the enforcement action and settlement with Alpha. Questions regarding other issues can be directed to [REDACTED].

62. What is the status of federal investigations into the Freedom spill?

This is an important issue, and investigations into the Freedom spill are ongoing. However, we are here today to discuss the enforcement action and settlement with Alpha. Questions regarding other issues can be directed to [REDACTED].

63. Does this settlement include anything to prevent slurry or “black water” discharges? What does EPA intend to do to prevent future catastrophes

like the recent Patriot coal slurry spill?

This settlement resolves specific violations of NPDES permit limits, and does not address pollutants not identified and addressed with specific discharge limits in NPDES permits.

Alpha remains subject to all applicable environmental regulations, and the settlement expressly reserves claims for violations that are not included in the Complaint, which would include any claims for illegal slurry discharges.

Regarding the Patriot incident, as noted at the outset of the press conference, we are here today to discuss the enforcement action and settlement with Alpha. Questions regarding other issues can be directed to [REDACTED].

64. Does the settlement include anything to address safety issues at legacy Massey mines, to prevent future disasters like the explosion at Upper Big Branch?

This settlement resolves specific violations of NPDES permit limits, and does not address pollutants not identified and addressed with specific discharge limits in NPDES permits. Safety issues are not addressed in the settlement of CWA and related state claims addressed in the CD.

Alpha remains subject to all applicable safety regulations, and the settlement expressly reserves claims for violations that are not included in the Complaint.

**Questions re Surber Article (Environmental Enforcement
as a Shield Rather than a Sword)**

65. A recent article in *Environmental Justice* by Sarah Surber (“Surber article”) claims that EPA and the Department of Justice have failed to follow up on their 2008 Consent Decree with Massey Energy and have failed to make the company stop its illegal discharges and comply with the Clean Water Act. How do you respond to that?

As we have discussed (see answer to question 5), this action was in part the result of investigations into Massey’s failure to come into compliance with the CWA after the 2008 Consent Decree. The settlement resolves certain claims for violations of the 2008 Consent Decree, and includes substantial and stringent measures designed to bring Alpha operations (including legacy Massey operations) into compliance (see answer to question 29).

66. The Surber article claims that Massey operations (1) have accrued more violations after the 2007 Consent Decree than before, (2) have violated the CWA at new sites not covered by the 2007 Consent Decree, and (3) have discharged new pollutants since the 2007 Consent Decree. Are these claims accurate?

We would agree that there have been a substantial number of Clean Water Act violations at Massey operations after the 2008 Consent Decree, though there has been some improvement in compliance. Otherwise, comparisons are difficult to draw: Massey both sold and acquired companies after 2008, operations expanded in some areas and wound down in others, and many post-2008 permits have included differing effluent limits and additional pollutants.

67. How do you respond to the statement in the Surber article that “there are thousands of other instances of illegal coal mining pollution that EPA and the states have not addressed”?

Including this settlement, the United States has entered into five major settlements with some of the largest coal producers in Appalachia to address illegal discharges of pollutants (Massey, Patriot, Arch, Consol, and now Alpha). This means that a significant percentage of Appalachian operations are subject to continuing, enforceable obligations designed to ensure compliance with the Clean Water Act. Moreover, implementation of the Patriot, Arch, and Consol consent decrees has resulted in dramatic improvements in compliance at those operations.

68. I forgot what you told me about this - if state does not have electronic reporting, only report on paper?

Alpha will provide discharge monitoring reports (DMRs) to each state under that state's current reporting procedures. If a state does not have electronic reporting, then Alpha will submit its DMRs by paper. However, Alpha will provide quarterly reports of its permit violations and auditing results to EPA settlement contacts electronically.